

**AGREEMENT
BETWEEN
MACOMB INTERMEDIATE SCHOOL DISTRICT
AND
EAST DETROIT PUBLIC SCHOOLS**

This Agreement ("School Recovery Agreement" or "Agreement") is entered into by and between Macomb Intermediate School District ("ISD") and East Detroit Public Schools ("LSD") effective upon the date of the latest signature hereinafter provided.

WHEREAS, the people of the state of Michigan encourage schools and the means of education and require the maintenance of free public elementary and secondary schools pursuant to Sections 1 and 2 of Article VIII of the State Constitution of 1963.

WHEREAS, the people of the state of Michigan authorize the state of Michigan and its political subdivisions to enter into agreements for the performance, financing and execution of governmental functions pursuant to Section 5 of Article III of the State Constitution of 1963.

WHEREAS, the people of the state of Michigan, pursuant to Section 28 of Article VII of the State Constitution of 1963, required the Michigan legislature to authorize two or more counties, townships, cities, villages or districts, or any combination thereof among other things to: enter into contractual undertakings or agreements with one another or with the state or with any combination thereof for the joint administration of any of the functions or powers which each would have the power to perform separately; share the costs and responsibilities of functions and services with one another or with the state or with any combination thereof which each would have the power to perform separately; transfer functions or responsibilities to one another or any combination thereof upon the consent of each unit involved; cooperate with one another and with state government; lend their credit to one another or any combination thereof as provided by law in connection with any authorized publicly owned undertaking.

WHEREAS, the Michigan legislature enacted the Urban Cooperation Act, 1967 (Ex Sess) PA 7, MCL 124.501 *et seq.*, whereby public agency of state of Michigan may exercise jointly with any other public agency of the state of Michigan, with a public agency of any other state of the United States, with a public agency of Canada, or with any public agency of the United States government any power, privilege, or authority that the agencies share in common and that each might exercise separately.

WHEREAS, the Michigan legislature enacted the Intergovernmental Transfers of Functions and Responsibilities Act, 1967 (Ex Sess) PA 8, MCL 124.531 *et seq.*, whereby two or more political subdivisions may enter into a contract with one another providing for the transfers of functions or responsibilities to one another or any combination thereof with the consent of each political subdivision involved.

WHEREAS, the Michigan legislature enacted the Intergovernmental Contracts between Municipal Corporations Act, 1951 Act 35, MCL 124.1 *et seq.*, ("Intergovernmental Contracting Act"), whereby a municipal corporation shall have power to join with any other municipal

corporation, or with any number or combination thereof by contract, or otherwise as may be permitted by law, for the ownership, operation, or performance, jointly, or by any 1 or more on behalf of all, of any property, facility or service which each would have the power to own, operate or perform separately.

WHEREAS, the Michigan legislature enacted Section 1280c of the Revised School Code, 1976 PA 451, MCL 380.1 *et seq.*, (the "Code") in part, to identify those public schools to be among the lowest achieving 5% of all public schools in Michigan, as defined for the purposes of the federal incentive program created under sections 14005 and 14006 of title XIV of the American recovery and reinvestment act of 2009, Public Law 111-5.

WHEREAS, the Michigan legislature created the State School Reform/Redesign District ("Redesign District") and the State School Reform/Redesign Officer ("Redesign Officer") pursuant to Section 1280c whereby the Redesign Officer is authorized to order a public school to be placed into the Redesign District or to appoint a chief executive officer to operate multiple public schools.

WHEREAS, the Redesign District and Redesign Officer are part of the State School Reform/Redesign Office ("Redesign Office", and together with the Redesign District and the Redesign Officer, the "Redesign Authorities").

WHEREAS, ISD is an intermediate school district governed, in part, by Part 7 of the Revised School Code, which is MCL 380.601 through 380.705, and may, upon request of the board of a constituent local school district, furnish services to that constituent local school district.

WHEREAS, LSD is a local school district governed, in part, by Section 11a of the Revised School Code, MCL 380.11a, pursuant to the Revised School Code may exercise a power incidental or appropriate to the performance of a function related to operation of the school district in the interests of public elementary and secondary education in the school district.

WHEREAS, ISD and LSD (each a "Party", and together, the "Parties") are each a "municipal corporation" pursuant to the Intergovernmental Contracting Act, a "public agency" pursuant to the Urban Cooperation Act and a "political subdivision" pursuant to the Transfers Act.

WHEREAS, LSD operates one or more public schools that have either (a) been placed on the list identifying the public schools determined to be among the lowest achieving 5% of all public schools in Michigan (the "List"), (b) had Redesign Officer not approve its redesign plan, (c) had the Redesign Officer determine that a redesign plan is not achieving satisfactory results for the Constituent School, or (d) had the Redesign Officer determine that better educational results are likely to be achieved by appointing a chief executive officer to take control of multiple public schools and one of those public schools is a public school being operated by the LSD ("Public School").

WHEREAS, LSD desires to enter into an agreement with ISD to obtain ISD's advice and counsel related to LSD's operation of a Public School as an alternative to that Public School's placement in the Redesign District pursuant to Section 1280c(6) or under the control of a chief executive officer pursuant to Section 1280c(7).

WHEREAS, ISD and LSD agree that ISD's advice and consultation with regard to a Public School will help LSD provide the academic programs, services and support every LSD student deserves.

Now, therefore, the Parties agree as follows:

Article I. LSD SCHOOL SUBJECT TO THIS AGREEMENT

Section 1.01 Identification of Public School(s). The Public School(s) that is the subject of this Agreement is any East Detroit Public School identified as a priority school. ("Constituent School").

Section 1.02 Limitation on Agreement. Unless otherwise provided in this Agreement, ISD and LSD agree that this Agreement relates only to ISD serving in an advisory capacity.

Article II. PURPOSE OF AGREEMENT & RELATIONSHIP BETWEEN THE PARTIES

Section 2.01 Purpose of Agreement. The Parties agree that they shall work together in good faith in order to improve the academic performance of the Constituent School. In particular, ISD agrees that it will advise, cooperate and collaborate with LSD to help LSD improve the academic performance of the Constituent School, including, but not limited to, advising LSD on issues pertaining to student growth, curriculum, data collection, finance, and staffing. This Agreement is at all times contingent upon LSD taking all actions necessary to avoid the placement of the Constituent School from being placed in the Redesign District pursuant to Section 1280c(6) or under the control of a chief executive officer pursuant to Section 1280c(7).

Section 2.02 Effect of Agreement. The Parties acknowledge and agree that this Agreement is an alternative to the Constituent School being subject to the supervision, operation or other intervention of the Redesign Authorities. All the authority, powers, duties, rights, obligations, functions, and responsibilities of the Redesign Authorities with respect to Constituent School are restrained immediately upon execution of an intergovernmental agreement between the State School Reform/Redesign District, the State School Reform/Redesign Office, the State School Reform/Redesign Officer and Macomb Intermediate School District ("SRO Agreement") but only so long as this Agreement remains in effect. Upon termination of this Agreement for any reason, all the authority, powers, duties, rights, obligations, functions, and responsibilities of the Redesign Authorities with respect to Constituent School will immediately revert back to the Redesign Authorities and ISD will have no further obligations hereunder.

Section 2.03 LSD Request to ISD to Exercise Authority. Upon LSD's request, ISD may exercise any authority, powers, duties, rights, obligations, functions, and responsibilities with

respect to the Constituent School, transferred to ISD as provided under the SRO Agreement, or delegated to ISD by LSD, pursuant to the Revised School Code and all other applicable law.

Section 2.04 ISD's Functions and Responsibilities with respect to the Constituent School.

Notwithstanding anything in this Agreement to the contrary, LSD acknowledges and agrees that for the duration of this Agreement ISD has and may exercise all the authority, powers, duties, rights, obligations, functions, and responsibilities of the Redesign Authorities with respect to Constituent School.

Section 2.05 Status of the Parties. Nothing in this Agreement is intended to create an employer/employee relationship, partnership or joint venture relationship between ISD and LSD. The parties agree that none of the voting power of the LSD Board of Education will be vested in ISD or its board members or employees. Further, LSD and ISD are not, and shall not become: (a) members of the same controlled group, as that term is defined in the Internal Revenue Code of 1986, as amended (the "IRS Code"); or (b) related persons, as that term is defined in the IRS Code. During the Term of this Agreement, LSD may disclose to ISD or ISD may access confidential data and information to the extent permitted by applicable law, including, without limitation, the Family Educational Rights and Privacy Act, the Individuals with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, the Michigan Mandatory Special Education Act, the Americans with Disabilities Act, the Health Insurance Portability and Accountability Act, and social security numbers protected by the Privacy Act of 1974 and the Michigan Social Security Number Privacy Act. ISD agrees that it shall comport with applicable law in the handling, maintaining, safeguarding, re-disclosing, and returning of all confidential data and information disclosed or accessed under this Agreement. Notwithstanding the foregoing or anything else herein, LSD designates employees of ISD as agents of LSD for the limited purposes of having a legitimate educational interest such that they are entitled to access educational records under 20 U.S.C. Section 1232g, the Family Educational Rights and Privacy Act.

Section 2.06 LSD Board Meetings. LSD shall notify ISD of all LSD board of education meetings and provide ISD with the agenda for all such meetings.

Section 2.07 LSD Delegation of Authority under Sections 1219 & 1220. Upon ISD's request, LSD shall delegate to ISD all of LSD's authority, powers, duties, rights, obligations, functions, and responsibilities necessary for ISD to carry out LSD's functions and responsibilities pursuant to Sections 1219 & 1220 of the Code.

Article III. OWNERSHIP OF ASSETS

Section 3.01 Ownership of Assets, Including Facilities. Notwithstanding anything in this Agreement to the contrary, the Parties agree that ownership of and title to any and all assets, including facilities, related to the Constituent School will not be changed as a result of this Agreement unless agreed upon by the Parties in writing.

Section 3.02 Ownership of Assets upon Termination. The Parties agree that upon termination of the Agreement ISD shall transfer any assets attributable to the Constituent School possessed by ISD to LSD as required by law.

Article IV. SCHOOL RECOVERY/INTERVENTION MODEL

LSD and ISD shall mutually agree upon a school recovery/intervention model that shall apply to the Constituent School and its implementation and LSD shall implement it which, when developed, shall be incorporated by reference into this Agreement, and which ISD may modify provided it gives written notice of such modification to LSD, and which shall provide detail with regard to the school intervention model that LSD shall apply and implement at the Constituent School. LSD may request that ISD delegate to LSD any ISD authority LSD deems necessary for LSD to apply and implement the applicable school intervention model. Any such delegation shall be in writing and signed by the ISD superintendent or his designee.

Article V. EMPLOYEES

Unless otherwise agreed or required by law, LSD staff and personnel will remain the employees or subcontractors of LSD. LSD shall be solely responsible for evaluation, discipline, and termination of LSD employees and subcontractors. LSD shall not hire any employee, nor contract with any subcontractor, who may impact instructional services at the Constituent School, without first having those prospective employees or subcontractors reviewed and recommended by ISD. The LSD employees and subcontractors who may impact instructional services at the Constituent School shall be described. Upon request by LSD, ISD may selectively waive the requirement that ISD review and make a recommendation with regard to a prospective hire.

Article VI. FINANCES

Section 6.01 Budget. Upon ISD request, LSD agrees to confer and collaborate in good faith with ISD with regard to the development and implementation of an annual budget for the Constituent School. In such a case, LSD shall provide ISD with an annual budget with respect to the District and the Constituent School that shall conform to the State accounting manual and the Uniform Budgeting and Accounting Act, MCL 141.421 *et seq.* The budget must contain reasonable detail as necessary to comply with Generally Accepted Accounting Practices (GAAP) standards and as requested by ISD. The budget shall include anticipated revenues and projected expenses and costs reasonably associated with operating the Constituent School including, but not limited to, the projected cost of all services provided or attributed to the Constituent School for rent and lease payments (if applicable), supplies and furnishings, taxes, insurance premiums, utilities, professional fees, debt service and/or prorated debt service, and other costs and expenses connected to the operation of the Constituent School. Upon ISD request, proposed budgets, as provided herein, shall be submitted to ISD for its review and advice a reasonable amount of time before adoption.

Section 6.02 Reimbursement. LSD and ISD shall agree in advance on costs to be reimbursed to ISD in performing this Agreement. LSD shall reimburse ISD for such costs within thirty (30) days upon invoicing upon ISD. This Section 6.02 shall survive termination of this Agreement with regard to reimbursable costs incurred by ISD but not yet paid by LSD.

Article VII. TERM & TERMINATION

Section 7.01 Term. This Agreement becomes effective upon the latest date of the signatories and shall continue, unless earlier terminated in accordance herewith, for a term concurrent with the term specified in the SRO Agreement applicable to the Constituent School pursuant to which functions and responsibilities are transferred from the Redesign Authorities to ISD. The Parties may mutually agree in writing to terminate this Agreement at any time.

Section 7.02 Termination of this Agreement by Either Party. Either Party may terminate this Agreement, with or without cause, and without recourse to the non-terminating Party, by providing at least sixty (60) days written notice of termination to LSD.

Article VIII. DISPUTE RESOLUTION

Section 8.01 Arbitration. Any and all disputes between the parties concerning any alleged breach of this Agreement or arising out of or relating to the interpretation of this Agreement or the parties' performance of their respective obligations under this Agreement that are unable to be resolved through discussion and negotiation shall be resolved by, at ISD's sole option, one of the following arbitration procedures, and such an arbitration procedure shall be the sole and exclusive remedy for such matters:

- (a) The parties shall submit the dispute to the Superintendent of Public Instruction, who shall serve as the sole arbiter of the dispute. The Superintendent shall render a decision within ten (10) days of the close of dispute proceedings determined by the Superintendent of Public Instruction. In the event that any party is dissatisfied with the Superintendent of Public Instruction's resolution of the dispute, the aggrieved party may appeal to the State Board of Education. The appeal must be filed and served within ten (10) days of the Superintendent of Public Instruction's decision. If such a timely appeal is not taken the Superintendent of Public Instruction's decision such decision is final. The State Board of Education's resulting decision shall be final and binding upon all Parties. A judgment on a final decision may be entered in any court having appropriate jurisdiction; or
- (b) An arbitrator shall be selected from a panel provided by and in accordance with the rules of the American Arbitration Association. The arbitration shall be conducted in accordance with the rules of the American Arbitration Association, with such variations as the parties and the arbitrator unanimously accept. Any arbitration hearing shall be conducted at an ISD location to be determined by ISD. A judgment on the award rendered by the arbitrators may be entered in any court having appropriate jurisdiction. The cost of this arbitration option, not including attorney fees, shall be split by the parties.

Each party shall pay its own attorney fees and costs of experts with respect to either of the above options. This Article survives termination of this Agreement.

Article IX. LIABILITY, INSURANCE & INDEMNIFICATION

Section 9.01 Liability for Acts or Omissions. Any act or omission arising out of or related to any action or inaction that occurred or accrued related to the Constituent School prior to, during or after the term of this Agreement shall remain the sole liability of LSD.

Section 9.02 Indemnification of ISD. To the extent permitted by law, LSD shall indemnify and save and hold ISD and all of its employees, officers, members, subcontractors, volunteers and agents, both in their individual and official capacities (the "ISD Parties") harmless against any and all claims, demands, suits, or other forms of liability that may arise out of, or by reason of the negligence of the ISD Parties, or any noncompliance by the ISD Parties with any agreements, covenants, warranties, or undertakings of the ISD Parties contained in or made pursuant to this Agreement. In addition, LSD shall reimburse the ISD Parties, and each of them, to the extent permitted by law, hereby agree to indemnify the ISD Parties and hold them harmless of and from all claims, demands, suits, and assessments, of any nature and kind, no matter by whom made, arising out of or attributable to this Agreement, including, but not limited to all reasonable expenses and costs of every nature and kind, including legal fees, damages, fines, assessments and penalties. The ISD Parties shall be entitled to defend, through counsel of its own choosing, for any action of and from which LSD is obligated to indemnify and hold the ISD Parties harmless. The indemnifying party hereby waives any conflict of interest with respect to ISD's choice of counsel. LSD shall immediately notify ISD of any such action upon notice to LSD.

Section 9.03 Insurance. LSD shall purchase, secure, and otherwise maintain insurance coverages in coverage amounts and limits acceptable to ISD. LSD shall ensure that ISD is named as an additional insured on each such policy. Such policies shall not be changed, revoked or modified absent thirty (30) days' notice advance written to ISD. In the event that ISD requests, in writing, that the level, type, scope or other aspects of such insurance coverage change, then LSD shall undertake like and similar modifications within 30 days of being notified of such a request. LSD shall, upon request, present evidence to ISD that it maintains the requisite insurance in compliance with the provisions of this Agreement.

This Article survives termination of this Agreement.

Article X. MISCELLANEOUS

Section 10.01 Monitoring Reports. LSD will cooperate with ISD and, upon any reasonable request, provide ISD with the data and monitoring reports in the form and manner requested to demonstrate the effect of this Agreement on the Constituent School's academic progress.

Section 10.02 Amendment. This Agreement may only be amended upon written agreement of the Parties.

Section 10.03 Notices. Any and all correspondence or notices required, permitted, or provided for under this Agreement to be delivered to any Party shall be sent to that Party by first class mail. All such written notices shall be sent to each other Party's signatory to this Contract at the address identified below. All correspondence shall be considered delivered to a Party as of the date that the notice is deposited with sufficient postage with the United States Postal Service. A notice of termination shall be sent via certified mail to the address included with each Party's signature to this Contract.

Section 10.04 Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of the parties and their respective successors and assigns.

Section 10.05 Governing Law. This Agreement is made and entered into in Michigan and shall in all respects be interpreted, enforced, and governed under Michigan law without regard to the doctrines of conflict of laws. The language of all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning and not construed strictly for or against any Party.

Section 10.06 Severability or Conflict of Provisions. If any provision of this Agreement, or its application to any Party, person, or circumstance, is invalid or unenforceable, the remainder of this Agreement and the application of that provision to other persons or circumstances and to the remaining Parties is not affected but will be enforced to the extent permitted by law, it being the intent of the Parties to continue to agree to the substantive provisions of this Agreement and to implement the Agreement. To the extent a term of this Agreement may irreconcilably conflict with a term of this Agreement as provided in an exhibit to this Agreement, the term included in an exhibit to this Agreement shall be superseded by the conflicting term in this Agreement.

Section 10.07 Public Purpose and Governmental Function. As both the LSD and ISD are bodies corporate and governmental agencies, the powers, duties, rights, obligations, functions, and responsibilities exercised pursuant to this Agreement constitute essential public purposes and governmental functions.

Section 10.08 Delegation to Superintendent. By executing this Agreement the Parties hereby delegate to their respective Superintendents or the Superintendent's respective designee the authority to take any and all action necessary to carry out the purposes of this Agreement.

This Agreement is executed by the Parties on the dates indicated below.

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**EAST DETROIT PUBLIC
SCHOOLS**

By: _____
Name: _____
Its: Superintendent

Date: _____
Address: _____

**MACOMB INTERMEDIATE SCHOOL
DISTRICT**

By: _____
Name: _____
Its: Superintendent

Date: _____
Address: _____

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